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10 Attorneys for Non-Party  
11 REDDIT, INC.

12 **UNITED STATES DISTRICT COURT**  
13 **NORTHERN DISTRICT OF CALIFORNIA**  
14 **OAKLAND DIVISION**

15 *In re: Subpoena Reddit, Inc.*

16 Case No. 4:23-mc-80119-KAW

17 (Originating Case: *Silva v. Doe 1, et al.*, S.D.  
Fla. 1:22-cv-24262-RKA)

18 **REDDIT, INC.'S RESPONSE TO**  
19 **MOTION TO COMPEL**

20 Hearing Date: TBD  
21 Time: TBD  
22 Judge: Magistrate Judge Westmore

1       **I. INTRODUCTION**

2       Plaintiff Riccardo Silva’s (“Plaintiff”) Motion to Compel asks the Court to compel Reddit to  
 3 unmask an anonymous Reddit user (the “Target User”) who alleges that Plaintiff sexually harassed  
 4 her and other women in the modeling industry. Dkt. 1–1 at 10–13. Given the seriousness of these  
 5 allegations, Reddit asks the Court to determine whether Plaintiff has satisfied the applicable First  
 6 Amendment standard for unmasking anonymous online speakers.

7       As Plaintiff acknowledges, the applicable First Amendment standard requires a court to “(1)  
 8 notify the speaker and provide them with an opportunity to (anonymously) defend their anonymity;  
 9 (2) require the party seeking disclosure to make a prima facie showing on the merits of their claim;  
 10 and (3) balance the equities, weighing the potential harm to the party seeking disclosure against the  
 11 speaker’s interest in anonymity, in light of the strength of the underlying claim.” *In re DMCA* §  
 12 512(h) Subpoena to Twitter, Inc. (“*In re DMCA*”), 608 F. Supp. 3d 868, 876 (N.D. Cal. 2022); see  
 13 also Mot. 7–8.

14       Here, the notice requirement has likely been met, as Reddit has notified the subject user of  
 15 Plaintiff’s subpoenas and the instant Motion; however, Plaintiff must still establish a prima facie  
 16 showing of his claims for defamation, stalking, and intentional infliction of emotional distress under  
 17 Florida law, and demonstrate that the balance of equities tips in his favor and justifies infringing on  
 18 the Target User’s established First Amendment right to speak anonymously. Notably, Plaintiff did  
 19 not file a declaration in support of the Motion, and the absence of such declaration puts into question  
 20 whether Plaintiff has provided a “real evidentiary basis” to support his claims. *Wirt v. Twitter, Inc.*,  
 21 No. 21-mc-80166-JSC, 2021 WL 5919846, at \*1 (N.D. Cal. Dec. 15, 2021) (the absence of a  
 22 declaration may constitute a failure to “persuade the court that there is a real evidentiary basis for  
 23 believing that the [speaker] has engaged in wrongful conduct that has caused real harm to the  
 24 interests of the plaintiff.”); *Kechara House Buddhist Association Malaysia v. Does*, No. 15-cv–  
 25 00332–DMR, 2015 WL 5538999, at \*4 (N.D. Cal. Sept. 18, 2015) (plaintiff may not rest on its  
 26 pleadings to provide a “real evidentiary basis” for a defamation claim against Doe Defendants).

27       Further, and relevant to assessing the balance of equities, Plaintiff’s proposed unmasking  
 28 could have a chilling effect on speech that is a matter of public concern. See, e.g., *Guzman v. Finch*,

1 No. 19CV412-MMA (MDD), 2019 WL 1877184, at \*6 (S.D. Cal. Apr. 26, 2019) (finding that  
 2 defendant's Facebook post, which was about alleged sexual abuse, was a matter of public concern);  
 3 *see also Snyder v. Phelps*, 562 U.S. 443, 451-52 (2011) (speech that is "matter[] of public concern"  
 4 is "at the heart of the First Amendment's protection."). Given the sensitive nature of the Target  
 5 User's speech, Reddit asks the Court to carefully evaluate Plaintiff's claims and engage in the  
 6 requisite balancing test.

7 Reddit respectfully requests that the Court grant the Motion only if it concludes that Plaintiff  
 8 has satisfied this burden.

9 **II. BACKGROUND**

10 **A. Reddit**

11 Reddit is a Delaware corporation with its principal place of business in San Francisco,  
 12 California. Declaration of John Roche ("Roche Decl.") ¶ 2. Reddit operates the reddit.com platform,  
 13 a community of online communities called "subreddits," where users gather to discuss shared  
 14 interests. *Id.* Users generally participate on the platform pseudonymously, and Reddit does not  
 15 require that users use or provide their real names. *Id.*

16 **B. Plaintiff and the Doe Defendant(s)**

17 Plaintiff seeks information to unmask the identity of the Reddit user who operates the account  
 18 u/SOSilva7 (the "Target User") in order to pursue his action for defamation, stalking, and intentional  
 19 infliction of emotional distress pending in the United States District Court for the Southern District of  
 20 Florida. *See Mot.* at 3. Plaintiff alleges that Defendant(s) published on various subreddits defamatory  
 21 posts accusing Mr. Silva of engaging in sexual abuse and sexual harassment against "young women"  
 22 in the modeling industry. *Id.* at 10-11.

23 **C. The Subpoenas**

24 On February 10, 2023, Plaintiff served an initial subpoena on Reddit (the "Initial  
 25 Subpoena"), which sought oral testimony and documents that would reveal the identity of the Target  
 26 User. *See Roche Decl.* ¶ 3. Reddit timely objected to the Initial Subpoena, asserting amongst other  
 27 things, that it infringed upon the Target User's First Amendment right to speak anonymously, and it  
 28 improperly sought compliance more than 100 miles away from Reddit's residence in violation of

1 Fed. R. Civ. P. 45. *Id.* The parties subsequently conferred on Reddit's objections on multiple  
 2 occasions, and at the same time, Reddit provided notice of the Initial Subpoena to the Target User on  
 3 February 14, 2023. *Id.*

4 On March 31, 2023, Plaintiff served an Amended Subpoena (the "Amended Subpoena") on  
 5 Reddit that cured the place of compliance issue, narrowed the scope of the subpoena, and only  
 6 sought documents. *See Roche Decl. ¶ 4.* Specifically, the Amended Subpoena—the subpoena at  
 7 issue here—seeks non-content basic subscriber information for the Target User. *Id.* Reddit again  
 8 provided the Target User notice, and timely objected to the Amended Subpoena, re-asserting its First  
 9 Amendment objection. *Id.*

10 Thereafter, the parties continued their meet and confer efforts, agreeing that the Amended  
 11 Subpoena only seeks non-content basic subscriber information and the only outstanding objection  
 12 concerned the Target User's First Amendment rights. *See Roche Decl. ¶ 6.* The parties ultimately  
 13 agreed that a motion to compel would be necessary, and further agreed that any motion to compel  
 14 that Plaintiff filed would be limited to having the court decide the First Amendment issue. *Id.*

15 In response, Plaintiff filed the instant Motion and Reddit provided user notice of the same on  
 16 April 20, 2023. *See Roche Decl. ¶ 6.*

### 17 III. ARGUMENT

18 "It is well established that the First Amendment protects the right to anonymous speech."  
*Music Grp. Macao Com. Offshore Ltd. v. Does*, 82 F. Supp. 3d 979, 983 (N.D. Cal. 2015) (cleaned  
 19 up). "This protection applies with equal force to online speech." *In re DMCA*, 608 F. Supp. 3d at  
 20 876. As the Ninth Circuit has recognized, "[a]s with other forms of expression, the ability to speak  
 21 anonymously on the Internet promotes the robust exchange of ideas and allows individuals to  
 22 express themselves freely without 'fear of economic or official retaliation ...[or] concern about  
 23 social ostracism.'" *In re Anonymous Online Speakers*, 661 F.3d 1168, 1173 (9th Cir. 2011) (*citing*  
 24 *McIntyre v. Ohio Elections Comm'n*, 514 U.S. 334, 341-42 (1995)). Enforcing a subpoena to unmask  
 25 an unknown speaker on the Internet "poses a real threat to chill protected comment on matters of  
 26 interest to the public. Anonymity liberates." *Highfields Cap. Mgmt., L.P. v. Doe*, 385 F. Supp. 2d  
 27 969, 980-81 (N.D. Cal. 2005).

1       Requiring litigants to meet First Amendment standards ensures that speech is not chilled  
 2 unnecessarily and that speakers are not unmasked inappropriately. Enforcing an unmasking  
 3 subpoena could enable “[a litigant] to impose a considerable price on [another’s] use of one of the  
 4 vehicles for expressing his views that is most likely to result in those views reaching the intended  
 5 audience. That ‘price’ would include public exposure of [a litigant’s] identity and the financial and  
 6 other burdens of defending against a multi-count lawsuit—perhaps in a remote jurisdiction.” *Id.* at  
 7 981.

8       Courts have therefore developed a standard for evaluating First Amendment rights where, as  
 9 here, the issuing party to a subpoena seeks to unmask an anonymous speaker in order to pursue  
 10 claims against that speaker. Specifically, “a court should (1) notify the speaker and provide them  
 11 with an opportunity to (anonymously) defend their anonymity; (2) require the party seeking  
 12 disclosure to make a *prima facie* showing on the merits of their claim; and (3) balance the equities,  
 13 weighing the potential harm to the party seeking disclosure against the speaker’s interest in  
 14 anonymity, in light of the strength of the underlying claim.” *In re DMCA*, 608 F. Supp. 3d at 876.

15      Plaintiff does not dispute that he must satisfy the standard applied in *In re DMCA*. *See Mot.*  
 16 at 7-8. The first prong of this test has likely been satisfied by way of Reddit providing notice to the  
 17 Target User of the Initial Subpoena, the Amended Subpoena, and the Motion. *See Roche Decl.* ¶ 3-  
 18 6. However, it is unclear to Reddit whether Plaintiff has satisfied the second and third prongs of the  
 19 *In re DMCA* test.

20      As an initial matter, Plaintiff did not file a declaration in support of the Motion. The absence  
 21 of a declaration may constitute a failure to “persuade the court that there is a real evidentiary basis  
 22 for believing that the [speaker] has engaged in wrongful conduct that has caused real harm to the  
 23 interests of the plaintiff.” *Wirt v. Twitter, Inc.*, 2021 WL 5919846, at \*1; *see also id.* at \*2 (relying  
 24 on plaintiff’s declaration to assess whether he provided “real evidentiary basis” to support his  
 25 claims); *Kechara House Buddhist Association Malaysia v. Does*,, 2015 WL 5538999, at \*4 (plaintiff  
 26 may not rest on its pleadings to provide a “real evidentiary basis” for a defamation claim against Doe  
 27 Defendants).

1       Further, and relevant to assessing the balance of equities, Plaintiff's proposed unmasking  
 2 could have a chilling effect on speech that is a matter of public concern, and therefore "at the heart  
 3 of the First Amendment's protection." *Snyder*, 562 U.S. at 451-52 (speech that is "matter[] of public  
 4 concern" is "at the heart of the First Amendment's protection."); *see, e.g., Guzman*, 2019 WL  
 5 1877184, at \*6 (finding that defendant's Facebook post, which was about alleged sexual abuse, was  
 6 a matter of public concern). Given the seriousness of the Target User's allegations, Reddit is not in a  
 7 position to evaluate Plaintiff's claims or engage in the balancing test.

8       In short, it is unclear to Reddit whether Plaintiff has stated *prima facie* claims for defamation,  
 9 stalking, and intentional infliction of emotional distress under Florida law, and whether on balance,  
 10 the equities weigh in Plaintiff's favor. As such, Reddit asks the Court to adjudicate whether Plaintiff  
 11 has sufficiently satisfied the applicable First Amendment standard.

12      **IV. CONCLUSION**

13      Reddit respectfully requests that this Court grant the Motion only if it concludes that Plaintiff  
 14 has satisfied the First Amendment's requirements for unmasking an anonymous speaker.

15      Dated: May 3, 2023

**PERKINS COIE LLP**

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 19           Doris Alvarez-Reyes

20           ATTORNEYS FOR REDDIT, INC.  
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**CERTIFICATE OF SERVICE**

This is to certify that a true and correct copy of the above and foregoing has been served upon all counsel of record, via the Court's CM/ECF system on May 3, 2023, as follows:

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